

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BRIAN WARREN,

Petitioner,

Civil No. 18-cv-12282
Hon. Matthew F. Leitman

v.

SHERRY BURT,

Respondent.

/

**ORDER DENYING PETITIONER’S MOTION FOR REFUND OF
CONSOLIDATED APPROPRIATIONS ACT PAYMENT (ECF No. 14)
WITHOUT PREJUDICE**

On May 28, 2021, Petitioner Brian Warren filed a motion asking that the Court refund him money that he says prison officials incorrectly sent to the Court on his behalf. (*See* Mot., ECF No. 14.) The Court has carefully reviewed Warren’s motion, and for the reasons stated below, the motion is **DENIED WITHOUT PREJUDICE**.

On July 20, 2018, Warren initiated this action by filing a document that he titled a “Motion for Relief from Order Denying Habeas Corpus Relief Where it is Void for Lack of Jurisdiction.” (*See* ECF No. 1). In that filing, which Warren styled as an “independent action,” Warren challenged an order that another Judge of this Court entered in a previous habeas action that Warren had filed. (*Id.*) The Clerk of the Court docketed Warren’s filing as a free-standing prisoner civil rights action, and

the Court subsequently allowed Warren to proceed without the prepayment of the required filing fee for civil rights cases. (*See* Order, ECF No. 5.)

On August 20, 2018, the Court dismissed this action without prejudice. (*See* Order, ECF No. 4.) The Court explained that even though Warren had indicated that he was initiating an “independent action, a review of the documents reveal[ed] that [Warren’s filing was] merely a challenge” to an order entered in his separate habeas action. (*Id.*, PageID.69.) And the Court further explained that “any motion for relief from judgment should be filed” in that case. (*Id.*, PageID.70.)

On September 25, 2018, the Court *sua sponte* vacated both its (1) August 20 order dismissing Warren’s action without prejudice and (2) order allowing Warren to proceed without the prepayment of the required filing fee for civil rights cases. (*See* Order, ECF No. 11.) The Court concluded that this action should have been docketed as a habeas petition (rather than a prisoner civil rights case). (*See id.*) The Court therefore ordered the Clerk of the Court to recode this case as habeas action and to refund to Warren any funds received from his prison account. (*See id.*) The case was then transferred to the United States Court of Appeals for the Sixth Circuit as a successive habeas petition under 28 U.S.C. § 2244. (*See id.*) The Sixth Circuit subsequently denied Warren permission to file a successive petition. *See In Re Warren*, Sixth Cir. No. 18-2131 (6th Cir. Feb. 7, 2019).

On May 28, 2021, Warren filed his current motion for a refund. (*See* Mot., ECF No. 14.) Warren says that on May 5, 2021, prison officials sent \$280.00 of his funds to the Court to pay an outstanding filing fee related to this case. (*See id.*) But Warren insists that he did not owe that fee because, as a habeas action, the filing fee is only \$5.00. (*See id.*) And Warren has provided some evidence that prison officials did deduct \$280.00 from his account and that the line item associated with that deduction was listed as “Court Filing Fee – 18-12282.” (*Id.*, PageID.146.)

However, the Court has searched its records, and it does not appear that it ever received a \$280.00 payment on Warren’s behalf related to this case. For example, nothing on the Court’s docket for this action indicates the receipt of any funds. In addition, the Court also contacted both the Court’s Financial Office and the Clerk’s Office. Neither office has received a check for \$280.00 on behalf of Warren for this case number. The Court simply has no record of receiving such a payment.

The Court therefore **DENIES** Warren’s motion (ECF No. 14) **WITHOUT PREJUDICE**. If Warren obtains additional documentation or evidence showing that prison authorities have sent money to this Court to be applied to this case, he may re-file his motion.

s/Matthew F. Leitman
MATTHEW F. LEITMAN
UNITED STATES DISTRICT JUDGE

Dated: November 23, 2021

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on November 23, 2021, by electronic means and/or ordinary mail.

s/Holly A. Monda

Case Manager

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